

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

TINA JOHNSON,

Plaintiff,

V.

**DAVID THOMAS HERBERT AND
INTRACOASTAL LIQUID MUD, INC.,**

Defendants.

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CIVIL NO: 1:22-CV-00411

**DEFENDANTS, DAVID THOMAS HERBERT AND INTRACOASTAL LIQUID MUD,
INC.'S, MOTION FOR VOLUNTARY DISMISSAL OF THEIR CROSS-CLAIM
AGAINST AMAZON LOGISTICS, INC. AND KENDRICK TRANSPORT, LLC, WITH
PREJUDICE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc. (hereinafter referred as “Defendants/Cross-Plaintiffs”), and pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby move for voluntary dismissal of their cross-claim against Cross-Defendants, Amazon Logistics, Inc. and Kendrick Transport, LLC, (collectively referred to as “Cross-Defendants”), with prejudice. In support thereof, Cross-Plaintiffs would respectfully show this Court as follows:

I.

1. On November 23, 2022, Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., filed a cross-claim against Cross-Defendants, Amazon Logistics, Inc. and Kendrick Transport, LLC, in the above-referenced case. (DOC 14).

2. On September 12, 2023, Plaintiff, Tina Johnson, and Defendants/Cross-Plaintiffs David Thomas Herbert and Intracoastal Liquid MUD, Inc., reached a settlement agreement,

resolving any and all claims asserted by Plaintiff, Tina Johnson, against Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., in the above-referenced matter.

3. Given recent developments in this case, including, but not limited to, the settlement of any and all claims asserted by Plaintiff, Tina Johnson, against Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., in the above-referenced matter, and after careful consideration, Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., have determined that it is in their best interest to dismiss their cross-claim against Cross-Defendants, Amazon Logistics, Inc. and Kendrick Transport, LLC, in the above-referenced case.

4. Cross-Defendants, Amazon Logistics, Inc. and Kendrick Transport, LLC, will not be prejudiced by the dismissal of Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., cross-claim for contribution. In fact, Cross-Defendants, Amazon Logistics, Inc. and Kendrick Transport, LLC, only stand to benefit from the dismissal of Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., cross-claim, considering that Defendants/Cross-Plaintiffs will no longer be seeking contribution from Cross-Defendants for any and all amounts Defendants/Cross-Plaintiffs are required to pay Plaintiff, Tina Johnson. Furthermore, Cross-Defendants, Amazon Logistics, Inc. and Kendrick Transport, LLC, have not filed counter-claims against Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., in the above-referenced matter.

5. Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., request that the dismissal of their cross-claim be with prejudice to refiling same.

6. Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD,

Inc., affirm that this Motion is not being made for any improper purpose, delay, or any other form of tactical advantage, but so that justice may be done.

7. Accordingly, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., request that the Court dismiss their *Cross-Claim Against Amazon Logistics, Inc. and Kendrick Transport, LLC* with prejudice to refiling.

II.

WHEREFORE, PREMISES CONSIDERED, Defendants/Cross-Plaintiffs, David Thomas Herbert and Intracoastal Liquid MUD, Inc., respectfully request that the Court grant their Motion for Voluntary Dismissal of Their Cross-Claim Against Amazon Logistics, Inc. and Kendrick Transport, LLC, with prejudice to refiling, and for such other and further relief to which they may be justly entitled.

J. DIAMOND AND ASSOCIATES, PLLC

/s/ Jeffrey L. Diamond

Jeffrey L. Diamond

State Bar No. 05802500

Taylor J. Diamond

State Bar No. 24109809

1111 North Loop W., Ste. 500

Houston, Texas 77008

Telephone (713) 227-6800

Facsimile (713) 227-6801

Service@jdiamondandassociates.com

Jeffrey@jdiamondandassociates.com

Taylor@jdiamondandassociates.com

ATTORNEYS FOR DEFENDANTS

DAVID THOMAS HERBERT AND

INTRACOASTAL LIQUID MUD, INC.

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with all other Parties to this matter about the merits of this Motion via email on October 16, 2023, but there has been no response from counsel for Defendant, Amazon Logistics, Inc., and counsel for Defendant, Kendrick Transport, LLC, regarding their stance on this Motion.

/s/ Taylor J. Diamond

Taylor J. Diamond

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2023, a true and correct copy of the foregoing instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure.

/s/ Jeffrey L. Diamond

Jeffrey L. Diamond